IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.823 OF 1998
IN
FIRST APPEAL NO.769 OF 2001

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OFFICE NOTES, OFFICE MEMORANDUM OF CORAM, APPEARANCES, COURT'S ORDERS OR DIRECTIONS AND REGISTRAR'S ORDERS	COURT'S OR JUDGES ORDERS

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Shri M.G. Barve for the Applicant.

CORAM : A. S. OKA, J.
DATE : JULY 25, 2006.

P.C.:

. Not on board. Taken on board.

1. Heard Shri Barve appearing for the Applicant. The challenge in this Appeal is to the impugned judgment and award made under Motor Vehicles act, 1939. The challenge is on the ground that the original Opponent No.2 who was driving the vehicle was not possessing the driving licence and the vehicle involved in the accident was not validly insured with the Applicant. It is not in dispute that the burden of establishing that a breach has been committed of the terms and conditions of the insurance policy was on the Applicant. The Applicant has led evidence of private

investigator appointed by it. The Tribunal after considering the material on record came to the conclusion that the Applicant has failed to discharge the said burden.

2. Even if the Applicant succeeds in the Appeal on the said ground, the award against the insured will remain. Even if the compensation is paid by the Applicant to the claimant, in the event of success in the Appeal, the Applicant can always recover the compensation amount from the insured.

3. Subject to what is stated above, no case is made out for grant of stay. Application is rejected.

JUDGE